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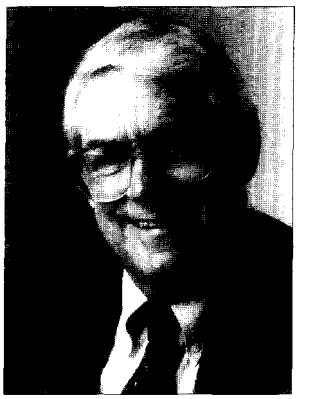
On the 25th Anniversary of Act 250, I welcome this opportunity to express my strong support and belief in the principles of this law. Adopted at a time when Vermont was entering a period of rapid and largely uncontrolled development, it has served the state well, providing its citizens with a unique opportunity to have a say in how their communities should grow and, at the same time, protect precious natural resources and heritage.

As times change, regulations also need to adjust to new demands and issues. The Environmental Board has recognized this need by a focus on improving the process without weakening the ten criteria which are so fundamental to the success of Act 250. I support the Board's efforts, with full recognition that the integrity of the law cannot be compromised. The future of our state depends upon it.

In reading the 25th Anniversary Report which follows, I hope you also will come to a fuller understanding of the long-term benefits of this law in maintaining the high quality of life in Vermont.

Governor Howard Dean, M. D.



Act 250 went into effect on June 1, 1970. It consisted of nine pages of text, followed shortly thereafter by fourteen pages of regulations implementing the law.

Today the annotated text of the law has grown to sixty-seven pages, and the implementing regulations consume eighty-three more. There have been countless decisions and court appeals over the years as close to 15,000 applications have been processed.

Yet, remarkably, the law is still managed by the same number of district commissioners and Board members, aided by nine district coordinators, their assistants and a Montpelier staff of eleven. These people are experienced, competent and committed to Act 250. Thus, the Act is still basically administered by local decision makers, men and women involved in their communities and thoroughly familiar with the issues, in the manner envisioned by Governor Dean C. Davis as he developed the framework for the law in 1970.

Certainly Vermont has changed over the past 25 years, but Vermonters continue to put a high priority on protecting our environment and our quality of life, values which are incorporated in the ten criteria of Act 250. These criteria have withstood the test of time, and remain as relevant today as they were in 1970 when unregulated development threatened Vermont's natural resources, a threat to which Governor Davis responded so promptly.

At this period in Vermont, there is considerable concern over the state of the economy. Act 250 is not an anti-growth law. In fact, most feel that it protects our most valuable assets and, with its long term focus, will ensure Vermont's future. However, it is essential that the administration of Act 250 be efficient and timely. The current emphasis of the Environmental Board, staff and district coordinators is to improve the processing of applications, and a series of changes are being implemented to achieve this result.

The basic mission of the Environmental Board and District Commissions is to make sound and reasonable decisions based on the evidence presented in a quasi-judicial mode of objectivity and fairness. As we move into the next twenty-five years of Act 250, we will always seek to achieve this mission, making sure that the law continues to address the critical issues for Vermont: the protection of our natural resources and the maintenance of our high quality of life.

John T. Ewing, Chair
Vermont Environmental Board

Twenty-fifth Anniversary Comments

On this 25th Anniversary we asked our former Governors, our Congressional Delegation, and our Lieutenant Governor to comment on Act 250. Their responses follow:

The passage of Act 250 was more than an act to protect against uncontrolled growth. I believe that history will record it as a defining moment involving the rejection of unfettered materialism and a commitment of the people of this state to a value system based upon man's spirituality and a love of and respect for land and its creatures. May it always be thus.

Philip H. Hoff
October 4, 1995

Act 250 was instrumental in preserving the Vermont we love. Many will not remember the crisis we faced 25 years ago with unchecked development running rampant through the countryside. Nor may everyone recall the unique convergence of political forces, behind the leadership of Governor Dean Davis, that led to the enactment of Act 250. As Attorney General at the time, I am proud of the role I played, along with countless Vermonters, working under tremendous pressure from all directions to pass the bill. The benefits accrue even today.

Senator James M. Jeffords
September 25, 1995

Act 250 has been a shield, defending Vermont against the degradation resulting from fast buck development. It has been a great benefit as a cornerstone in creating a superior quality of life. It can be of even greater benefit if the ability to use it as a sword for limited agendas can be blunted to advance the broader public interest.

F. Ray Keyser, Jr.
September 15, 1995

Act 250 is partly responsible for my running for the Vermont General Assembly in 1972. No sooner had the law been passed, when it came under attack, inspiring me to conclude that the law needed defenders. Why not do so from a seat in the legislature? Since then, the law has been both criticized and defended with great regularity just about every year, and from time to time, amended, but never substantially changed because Vermonters have made it work in their interest.

It is an unusual law in the amount of citizen input it provides, and in the criteria it spells out to assure that development is appropriate and done with care. I know of no other state which has approached the tough task of managing development in such an effective manner, but then no other state has protected its communities and landscape quite as successfully as Vermont. Act 250 has given us the tools necessary for responsible growth, while enabling us to maintain the character and values of this special place.

Madeleine M. Kunin
September 15, 1995

It would be difficult to imagine what kind of place my native state of Vermont might have become in the years between 1970 and 1995 without act 250. One thing is clear — it would not be the same Vermont we call home today. We Vermonters should never lose sight of this law's monumental contribution to the quality of our lives and communities. Vermonters today, and for generations to come, owe a debt of gratitude to Governor Davis and the 1970 General Assembly. Their foresight is responsible for Vermont's distinction today as among the most beautiful states in America.

Senator Patrick Leahy
September 15, 1995

Act 250 was an idea whose time had come. It represented an intuitive, bipartisan, Vermont response by our then Governor, Dean C. Davis, to a clear and present danger. Tough medicine was required to prevent the exploitation of our natural resources and our heritage as the State of Vermont was being discovered with the advent of the Interstate highway system. History records that the most significant period of economic growth in Vermont has occurred following enactment of this visionary statute which insists that Vermont will employ value driven criteria as the basis for development decisions. It has tempered how we have grown in a manner that helps make this state the special world that it is.

Thomas P. Salmon
September 12, 1995

The State of Vermont is proud of its natural beauty and our respect for the environment. For twenty-five years Act 250 has led the way in environmental protection and historic preservation. It has been a significant factor in preserving the beauty of our state which attracts so many tourists and helps sustain our economy. Controlled development and community involvement help us prevent or change plans that are not in the interest of Vermonters and only benefit developers.

Representative Bernard Sanders
September 15, 1995

Vermont's unique vision in creating Act 250 established this state as the nation's leader in environmental preservation, a reputation that has been an exceedingly valuable asset. The current objective must be to make Act 250 more user-friendly as it interfaces with the complexity of state and federal environmental regulations. Preservation of Vermont's environment and the generation of good jobs must be recognized as interdependent. Wise integration of environmental preservation and jobs creation is not only desirable but absolutely essential for the quality of life of future Vermonters.

Lt. Governor Barbara W. Snelling
September 20, 1995

The enactment of Act 250, 25 years ago came at a crucial moment. Vermont was in a very expansive period in terms of population growth and business activity. The adoption of Act 250 made it possible to assure that our state could enjoy this growth period and grow in ways that kept Vermont's unique qualities as well as her attractive and wholesome features. Vermont was an environmental example I could be proud of during the 1980's as Chairman of the US Senate Committee on Environment and Public Works.

Robert Stafford
September 14, 1995

The Evolution of Act 250

By Art Gibb and Sam Lloyd

Passage of the Law

By Executive Order No. 7, in May of 1969, Governor Dean C. Davis created the Governor's Commission on Environmental Control. The Commission was ordered to submit a report with recommendations to the Governor for the coming legislative session. In addition, the Governor appointed an Advisory Committee of some 30 individuals, all well-known in the field of environment and civic activities, who proved to be of invaluable assistance to the Commission.

The Commission (which came to be known as the "Gibb Commission") held 15 meetings during the summer of 1969. Subcommittees were also formed which held numerous meetings during the same period, and made recommendations in specific areas. The most difficult question facing the Commission over the summer was how to effectuate proper land use controls. At the time local zoning and planning was in its infancy in Vermont. The Planning and Development Act had been expanded in 1968, but very few towns had zoning ordinances, and even fewer had planning commissions. Much of the environmental legislation which we now take for granted, such as wetlands and water quality laws, had not been passed.

Another question facing the Commission was whether or not it wished to impose the regulatory power of the State directly on large developments. The Commission wrestled with this problem all through the summer, and in September of that year made the decision to subject large developments to State control.

Commission member Walter Blucher, a retired planner, was given the task of outlining how a new regulation governing land use could work. He did so, and in October he submitted a memorandum to the Commission. The main elements of the Blucher memorandum were as follows: There should be a State agency to implement the proposed controls. Every subdivision of land consisting of five or more lots shall be submitted to the State Agency for determination of the suitability of the land for development. In determining such suitability the Agency shall take into consideration the elevation of the property, the nature of the soils and the slopes, the ability of soils and slopes to provide for effluent, the availability of highways, the effect on local governments, and the conformance of the development to a state plan or regional or local plans.

Note that the above language tracks very closely with the evolution of the ten criteria of Act 250. The final section of the Blucher memo called for the adoption of a generalized land use plan for the State within one year after the adoption of the regulations. It stated that "such generalized land plan shall be used by regional and local planning agencies as a frame of reference in preparing and adopting regional or local land use and zoning regulations." It is unfortunate that a land use plan was never adopted, because if it had been, the full effect of the Blucher memo would have been realized.

The broad outlines of the Blucher plan were adopted and approved by the Commission, and legislation was prepared. Assistant Attorney General John Hansen, assigned to the Commission as its counsel, did the drafting along with then Attorney General, James Jeffords. Between them, Jeffords and Hansen wrote all the legislation for Act 250 as well as Act 252, the Water Control legislation.

These recommendations together with proposed legislation were all included in the Commission's report of January 19, 1970. It is interesting to note that all of the recommendations in the Commission's January report, and a subsequent one submitted in May of that year, have been enacted into law in one form or another during the last 25 years, including the recommendation to create a Department of Environmental Conservation.

One very basic change was made in the legislation at the instigation of Governor Davis. The recommendations of the Commission called for a state agency to administer the Act. Governor Davis was adamant in his belief that control should be as close to the people as possible, and it was his recommendation that the permitting process be placed in the hands of local district commissions with appeal rights to the Environmental Board. This was of great importance from the standpoint of passage of the legislation inasmuch as the concept of local control was still paramount in the State, and the Governor's insistence on keeping this process close to the people through local commissions turned out to be essential to its passage and continued success over the past 25 years.

Governor Davis delivered an environmental control message to the General Assembly on January 8, 1970. In the speech he outlined several priorities for environmental legislation. Regarding land use regulation he stated:

> "One of the most important recommendations we will make to you is the [Gibb] Commission's suggestion for statewide land development controls. This will be the workhorse bill in this package and will establish guidelines for growth in the State according to an overall land development plan."

There is no question that the success of the passage of Act 250 in 1970 was the direct result of the leadership of Governor Davis. He put the full weight of his office behind the Act and assigned a capable member of his staff, Al Moulton, to serve as his liaison with the legislature on the issue. As a result, Act 250 became law in the same year that it was introduced.

Act 250 Takes Its Final Form

In January 1973 Dean Davis turned his office over to newly elected Governor Tom Salmon. The crowd assembled at the Statehouse to hear Salmon's inaugural address was treated to a sample of dynamic leadership by departing Governor Davis as he delivered his farewell address. Citing his strong views on many of the issues facing the new Governor and legislature, he ended his summation by referring to the Land Capability and Development Plan, initially prepared in his administration, and about to be introduced into the 1973-1974 session. In most forceful and eloquent fashion, he charged the Legislature to "Read it, study it, debate it, amend it — but pass it!"

That bill — the mandated second part of the Act — provided all of the detailed subcriteria to the original "bare bones" ten. The final bill emerged from the Natural Resources Committee after several weeks of drafting and debate and proceeded to the House floor. After the bill was reported to the House, an historic four days of debate ensued. With no more than "housekeeping" amendments, the bill passed by a nearly two to one margin and went to the Senate, where it was approved with little difficulty. For all practical purposes, this ended the enactment process of Act 250 — without the adoption of a Land Use Plan, as originally required.

What caused the aborted end of this innovative environmental control thrust, lacking the Land Use Plan envisioned in 1970? Several factors combined to dampen the enthusiasm shared by the public, Legislature, and two administrations which had propelled the original Act and its second mandated component into statute in 1970 and 1973. First, the requirement of the Act to produce "a map" as part of the Land Use Plan: the existing county maps suggested as the basis for a statewide map produced immediate doubts as to accuracy, and inevitable questions and deep concerns as to where development could or could not take place. There was also disagreement between the State Planning Office and the Environmental Board as to what form the Land Use Plan should take. Another factor was the lack of a clear need to "save the State" from the destructive southern mountainside development that had posed such a visible and obvious threat previously. In addition, there was a sense of satisfaction that the first two parts of Act 250 had likely curbed what needed to be curbed. Finally, there was a concern that specific "do's and don't's" prescribed for specific locations determined by questionable maps would amount to "Statewide Zoning."

Looming over these concerns was an unwelcome and unexpected development that served to accentuate them all: the oil embargo, with the accompanying recession of 1973. In retrospect, it is easy to understand the rapid decline of interest in further far reaching land use controls. So much had been achieved in so short a time that perhaps it would be prudent to digest and refine what had already been accomplished — particularly with hard times looming ahead.

After a few ineffective efforts to create a statewide plan in 1974 and 1975, the legislature, after ignoring the Land Use Plan mandate in the original Act for several more years, removed that language with little debate in 1983.

Arthur Gibb chaired the "Gibb Commission" which recommended the legislation eventually enacted as Act 250. He served in the Vermont House of Representatives from 1963 to 1970 and in the Vermont Senate from 1971 to 1986. He has been a member of the Environmental Board since 1987 and served as Chair from 1994 to 1995. He lives in Weybridge, Vermont.

Sam Lloyd owned and operated the Weston Bowl Mill in Weston, Vermont from 1961 to 1991 and is an accomplished actor. During the the past 25 years he has served on numerous local and state boards and in the Vermont House of Representatives. He has been a member of the Environmental Board since 1985.

Art Gibb, Jim Jeffords and Al Moulton discussing their roles in the passage of Act 250.

The 10 Criteria

The underlying purpose of any land use regulation is to protect valuable resources and services for the use and enjoyment of current and future generations. In the case of Act 250, these resources are protected through the use of 10 essential criteria that an applicant must meet in order to receive a permit to pursue a project.

How important are the resources protected by these criteria? When we consider how many people live in Vermont, visit the state, or decide to move here because of Vermont's unspoiled environment, it is clear that the protection of Vermont's natural resources and services guarantees the continued stability of our quality of life. When we consider how many businesses are dependent upon the continued availability of Vermont's natural resources and the integrity of the "Made in Vermont" label, it is also clear that this same protection guarantees the continued and responsible growth of our economy.

This section of the report provides an overview of the 10 Criteria and how they protect important natural resources, governmental services, and other issues of public interest.

Criterion 1 Water and Air

Criterion 1 addresses issues concerning air and water quality. Water and air pollution, public access, wetlands, floodplains, and the protection of streams, rivers and shorelines are some of the concerns covered in these criteria.

The benefits of protections guaranteed under these criteria should be readily apparent. Visitors and residents alike are drawn to Vermont by clean air and pristine water. We all expect clean water supplies without the worry of contamination. Unspoiled streams, rivers, lakes, and wetlands are part of the state's natural heritage.

Criterion 1 Air Pollution

This subcriterion requires the District Commission to find that the project will not result in undue air pollution resulting from an industrial process or other point sources of air emissions. Non-point sources, such as automobile traffic are also considered, in cases where a proposed commercial project may generate a large volume of traffic.

While they may not be as obvious, other forms of air pollution such as dust, noise and odor, are also covered under this subcriterion. Depending on the proximity of the project to residential areas and other population centers these issues can be critical to the overall impact of a project.

Criterion 1(A) Headwaters

Particularly sensitive water sources, such as high elevation water supplies, small drainage basins, watersheds of public water supplies, and aquifer recharge areas are protected by Subcriterion 1(A). An applicant must demonstrate that a proposed development or subdivision will not reduce the quality of surface and ground water flowing through these areas.

Criterion 1(B) Waste Disposal

Subcriterion 1(B) specifies that a development or subdivision "will not result in the injection of waste materials or harmful or toxic substances into groundwater or wells." Under this subcriterion, a District Commission reviews an applicant's wastewater disposal plans to ensure that soils are adequate for on-site sewage disposal or that adequate reserve capacity exists in the nearby municipal treatment plant. The applicant must also prove that stormwater runoff from a newly developed site will not cause pollution or sedimentation of nearby streams.

Criterion 1(C)
Water Conservation

Although we seem to have an abundance of water in the state, most Vermonters recognize the need to conserve water. Water conserving plumbing fixtures and other conservation methods have become increasingly important as new demands are made on existing water supplies. Subcriterion 1(C) requires that new development projects utilize the best available technology for water conservation.

Criterion 1(D)
Floodways

If a project is to be located in a floodway or floodway fringe, Subcriterion 1(D) requires that the project will not restrict or divert the flow of flood waters and thereby endanger the health, safety, and welfare of the public or of riparian owners during flooding. In addition, a new development must not significantly increase the peak discharge of the river or stream within or downstream from the area to be developed.

Criterion 1(E)
Streams

Under Act 250's Criterion 1(E), projects proposed near streams must maintain the "natural condition" of the stream to the greatest extent possible and the applicant must demonstrate that the health, safety and welfare of adjoining landowners or the public will not be endangered.

To maintain the "natural condition" of a stream, erosion must be controlled, the stream banks must be maintained, and the quality of its water must not be degraded. The best way to ensure this is to design the project in concert with the natural location of the stream and thereby avoid any potential impact. This is often accomplished by providing an adequate buffer zone between the project and the stream. When stream impacts cannot be avoided, adequate mitigation must be provided to protect the integrity of the stream.

Criterion 1(F)
Shorelines

Criterion 1(F) requires that an applicant proposing a project along a shoreline of a lake, pond, or river must demonstrate that it is necessary for the project to be located on a shoreline in order to fulfill its purpose. In addition, the applicant must prove that, to the greatest extent feasible, the "natural condition" of the shoreline will be maintained. It may be necessary to plant additional vegetation in order to shield the project from the lake, pond, or river and to stabilize the bank from erosion.

Finally, a project must not diminish existing public access to public waters. This helps insure the continued enjoyment of existing recreational activities supplied by the shoreline and the adjacent waters for Vermonters and visitors alike.

Criterion 1(G)
Wetlands

Wetlands serve many important functions such as filtering pollutants, reducing erosion, recharging aquifers, reducing flooding and providing necessary habitat and breeding grounds for wildlife. In addition, these areas are important for their recreational and educational values.

Under this subcriterion, proposed projects must not violate the rules of the Water Resources Board protecting "significant" wetlands.

What attributes make a wetland "significant"? A wetland's significance is based on its role in providing the important functions mentioned above. For example, a wetland can be significant for groundwater protection if it recharges a well head or aquifer. A wetland is significant for wildlife if it provides breeding, nursing, or feeding grounds, or habitat to fish and other wildlife. This may also include endangered or threatened plants and animals.

If a project involves a significant wetland, the next step is to decide whether the project's use of the wetland will be "allowed" or "conditional" (allowed and conditional uses are fully listed in the Vermont Wetland Rules). Allowed uses are those that do not involve draining, dredging, filling, or altering the flow of water in or out of the wetland and include educational use, wildlife or fisheries management, and recreational uses. A project that involves an allowed use can begin using the wetland for that purpose without any review.

However, those projects that involve some disturbance to the wetland or required buffer zone must obtain a "conditional use determination" (CUD) from the Wetlands Office of the Vermont Agency of Natural Resources prior to proceeding with a project. In order to obtain a CUD an applicant must prove that the project will not have an adverse effect on the wetland. In certain situations, off-site mitigation may be required to compensate for wetland impacts associated with a development project.

If a wetland is not found to be "significant" under the Wetland Rules, it still may be protected under other Act 250 criteria involving waste disposal, erosion control, flooding, shorelines, or wildlife habitat.

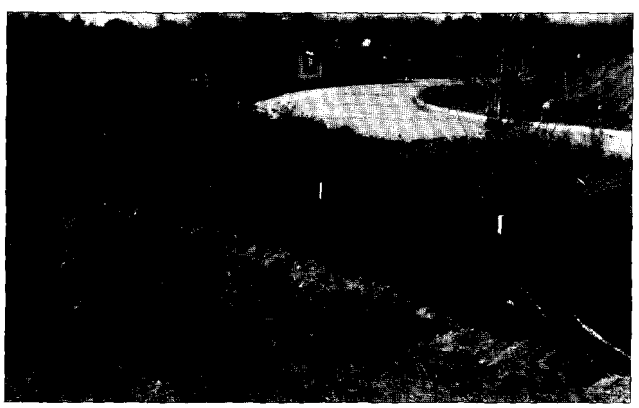
Criterion 2
Water Supply

Under Criterion 2 an applicant must demonstrate that there is sufficient water available for the reasonably foreseeable needs of the proposed subdivision or development. The water may come from a private source, such as a spring or well, or it may come from a public source such as a municipal water system. In either case, by assuring adequate water supplies for a project, this criterion protects public health and prevents costly water shortages in the future.

Criterion 3
Impact on Existing Water Supplies

Criterion 3 addresses the impact of a subdivision or development on existing water supplies. If a project is to utilize an existing water supply, the project must not cause an unreasonable burden on that supply. This protects existing users of a private or public water supply from having that supply diminished by a new user. Again, the public health is served by maintaining adequate water supplies, and future costs are avoided.

Criterion 4
Soil Erosion

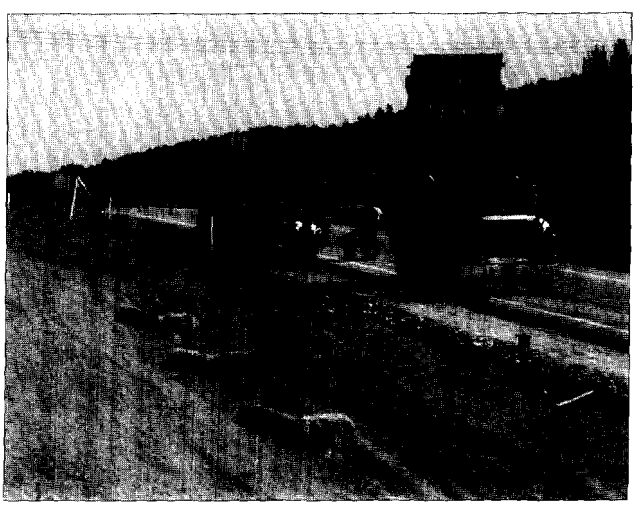


Under Criterion 4 a proposed project must not cause "unreasonable soil erosion or reduction in the capacity of the land to hold water." Soil erosion from development sites is one of the principal causes of pollution in Vermont's lakes and stream. By using erosion control techniques such as the installation of hay bale check dams and continuous silt fence barriers, soil can be contained on a site before it flows downhill and reaches a stream or river. Once a site is permanently stabilized by new vegetation or impervious surfaces, the threat of erosion is diminished and the erosion control devices can be removed.

Criterion 5
Traffic

Criterion 5 addresses traffic on highways, waterways, railways, airports and airways, and/or any other existing or proposed means of transportation. The most common issues addressed under this criterion are safety and congestion related to automobile traffic.

Large development projects often result in significantly increased vehicle trips on adjacent highways. Traffic safety and congestion impacts must be carefully considered, including safety at intersections, signalization, the number of travel lanes, the width of roads, speed limits, and whether an area is at high risk for accidents. Additionally, a District Commission will consider how much traffic the adjacent roadways can handle, particularly at peak traffic hours. While a District Commission may not deny a permit application under this criterion, a Commission may impose reasonable conditions in the permit, such as requiring the installation of turning lanes or other traffic improvements.



Criterion 6
Educational Services

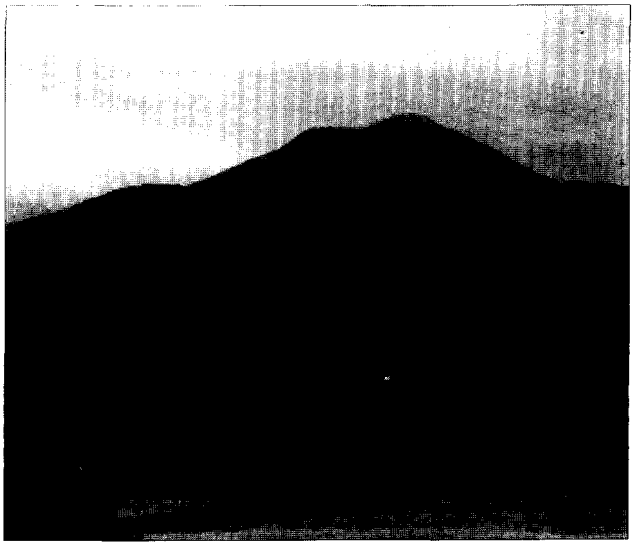
Criterion 6 specifically addresses the impact of a development or subdivision on the ability of a municipality to provide educational services. If a residential or commercial project will result in a significant increase in the number of children that need to be educated and the additional tax revenues to be generated by the project will not provide adequate financial resources to meet the demand, the quality of education in the community will suffer. Review under Criterion 6 is designed to mitigate any anticipated adverse impacts to the community's ability to provide these services.

Criterion 7
Municipal or Governmental Services

In Vermont, we may tend to take for granted the availability of services such as waste disposal, fire and police protection, rescue workers, water and sewage treatment and road maintenance. If any of those services were to become unavailable or greatly diminished as a result of development projects, we would notice the impact rather quickly.

Criterion 7 ensures that a proposed project does not place an unreasonable burden on the ability of the municipality to provide those services. Great public benefit is derived from the assurance that projects will not create such burdens, or that the burdens will be adequately mitigated.

Criterion 8
Scenic and Natural Beauty, Aesthetics, Natural Areas, Historic Sites



Scenic and Natural Beauty and Aesthetics

Vermont's scenic and natural beauty and the aesthetic impact of a proposed development or subdivision are considered under Criterion 8. The District Commissions and the Environmental Board ask two essential questions under this criterion: Will the project have any "adverse" aesthetic impacts on the scenic quality of an area and, if so, whether those impacts will be considered "undue" when taking into consideration the type of development project and its surroundings.

In its analysis, the District Commission or the Board must determine if the proposed project is compatible with its surroundings in terms of its visibility and its impact on open space and whether the project is to be located in a visually sensitive area.

If the District Commission or the Board finds that the project presents an adverse impact in a visually sensitive area, then the next step is to determine if any of the following are true: 1) Will the project violate any clear, written community standard? 2) Would the average person find the project shocking or offensive? 3) Has the applicant failed to take reasonable steps to lessen adverse effects? If the answer is yes to any of the above questions, then the project will be considered "unduly adverse" and must be denied. However, it is rare for a project to be denied for purely aesthetic reasons. Often, the design of an adverse project is altered in order to comply with Criterion 8. The quality of design is very high in Vermont because of Act 250's aesthetic review.

Historic Sites

Historic sites are also protected under Criterion 8. A development must not have an undue adverse effect on a site which is listed on the state or national register of historic places or is determined to be historically significant by the Vermont Advisory Council on Historic Preservation. These areas are an important part of Vermont's cultural heritage. Careful planning and early coordination with the Vermont Division for Historic Preservation are keys to satisfying this aspect of Criterion 8 and ensuring a successful development or subdivision.

Criterion 8(A)
Necessary Wildlife Habitat and Endangered Species

Criterion 8(A) protects necessary wildlife habitat and endangered species. This protection has important economic as well as ecological consequences. It is the one area of Act 250 review where some economic balancing is required. If a development or subdivision "will destroy or significantly imperil" necessary wildlife habitat or endangered species, a District Commission is required to weigh the economic, social, cultural or recreational benefit to be derived from the development versus the economic, environmental or recreational benefit derived from the habitat or species. Another important consideration is whether all "feasible and reasonable means of preventing or lessening ... the destruction or imperilment" will be implemented. In most cases, projects can be designed or redesigned to avoid undue adverse impacts on important resources.

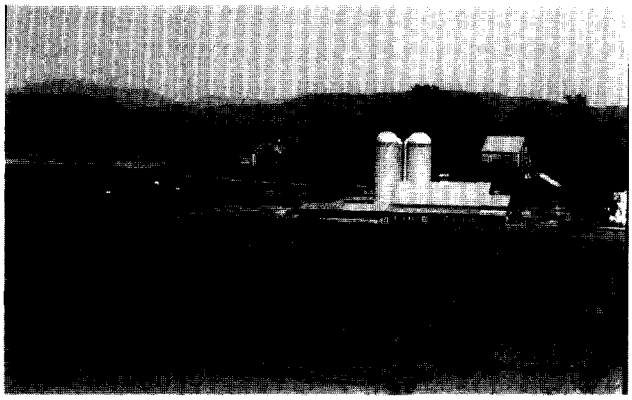
Criterion 9
Conformance with Capability and Development Plan

Criterion 9 covers a number of important issues related to public and private infrastructure, natural resource areas, and planning for orderly growth.

Criterion 9(A)
Impact of Growth

Subcriterion 9(A) requires that an applicant demonstrate that a development or subdivision will not significantly affect the financial capacity of a town or region to accommodate growth resulting from the proposed project in addition to the growth already anticipated by the town or region. This is not normally an issue for small residential or commercial projects, which fit within the historical growth rate of towns. Large projects, however, must be carefully reviewed to determine if they will cause an undue burden on the town or region's ability to provide services such as education, fire, police, and sewage disposal.

Criteria 9(B) and 9(C) Primary Agricultural Soils and Forest Soils



Twenty-seven percent of the land in Vermont is used for agriculture or forestry. The protection of these soils is of obvious economic importance; however, that protection also provides important aesthetic, ecological, and land use benefits. Individuals may still develop their properties in a manner which will not dramatically reduce the agricultural or forestry potential of the soils. In certain situations, offsite mitigation may be beneficial to the protection of the resource from a town, regional, or statewide perspective.

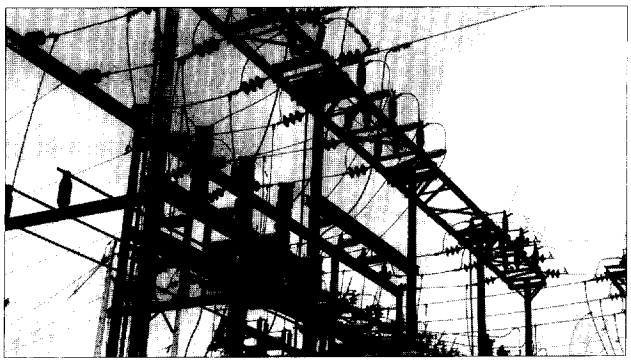
Criteria 9(D) and 9(E) Earth Resources

Subcriterion 9(D) protects lands with high potential for future resource extraction. Subcriterion 9(E) covers the actual impacts of a resource extraction project and requires planning for future rehabilitation of the site.

As with other Act 250 criteria, the concern here is twofold: economic and environmental. Destroying the extraction potential of an area through development would be shortsighted and economically unsound. At the same time, extracting earth resources without consideration for water quality, visual impacts, or future alternate uses of the area would be both environmentally and economically unsound.

In addition to these objective considerations, applicants must address issues such as noise, dust, and visual intrusions affecting adjoining property owners and nearby residents.

Criteria 9(F) and 9(J) Energy and Utilities



Energy conservation is of importance not only in Vermont, but throughout the world. The costs of energy, the depletion of energy resources, and concerns over pollution and remediation are world-wide.

Under Criterion 9(F) of Act 250, projects and developments in Vermont are required to use the best available technology for the efficient use or recovery of energy based on reasonable estimates of life cycle cost to the ultimate consumer. This is just good sense; it helps keep costs down and conserves our resources for future generations.

Similarly under Criterion 9(J), projects must not place an unreasonable burden on public utilities. This helps assure the availability of our energy resources for today and promotes sound energy planning for the future.

Criterion 9(G)
Private Utility Services

When a subdivision or development relies on privately-owned utility services, such as wastewater facilities or roads, an applicant must demonstrate that adequate legal and financial mechanisms are in place to protect the municipality in the event that the municipality is required to assume responsibility for the utilities. If private utilities are involved, a District Commission may condition the land use permit to require that the applicant maintain, repair and replace the utilities as approved.

Criterion 9(H)
Costs of Scattered Development

Subcriterion 9(H) states that "[the] district commission or board will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenues and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers."

Criterion 9(K)
Development Affecting Public Investments

Under this subcriterion, a District Commission must find that a proposed project will not unnecessarily or unreasonably endanger the public or quasi-public investment in public investments located adjacent to the project, such as highways, airports, waste disposal facilities, schools, parks, and forest and game lands. This includes providing continued public access to any affected public investment. For instance, a development project located next to a public park must not interfere with the public's use or enjoyment of the park.

Criterion 9(L)
Rural Growth Areas

Subcriterion 9(L) addresses the need for the careful planning of subdivisions and developments located in rural growth areas in order to "economize on the cost of roads, utilities, and land usage." This is one of several criteria in the law which is intended to protect municipalities from undue financial burdens caused by new development while conserving land.

Criterion 10
Local and Regional Plans

Criterion 10 requires that a proposed project be in conformance with duly adopted local and regional plans. If towns and regions of the state are to grow in an orderly way it is essential that new development follow the provisions of local and regional plans, which are adopted after much thought and debate by citizens who care about their town and region. Plans are updated every five years to reflect recent changes in population, land use, and public infrastructure. The provisions of Criterion 10 ensure that new development projects reflect the wishes of local citizens about the future of their town and region.

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Members: Bill Johnson
Leniy Zenonos
Alternate: Jill Broderick

Credits:

Text: Louis Borie, Michael Zahner

Photographs: Louis Borie

Project Coordinator: Vine Crandall

This report is an outgrowth of a 10 week internship with the Environmental Board by
Theresa Gallant, a student at Green Mountain College.
The internship was sponsored by the Vermont Environmental Internship Program,
a pilot project of the New England Board of Higher Education.

Funding for this report was provided by The Brattle Fund of The Vermont Community Foundation.

Vermont Environmental Board
58 East State Street
Drawer 20
Montpelier, VT 05602-3201

EXHIBIT D

State of Vermont

LAND USE PERMIT
AMENDMENT

CASE NO.: 3R0703-EB
APPLICANT: Stokes Communications Corporation
ADDRESS: c/o Edward Stokes
P.O. Box 249
Randolph Center, VT 05061
and
Idora Tucker
36 Highland Avenue
Randolph, VT 05060

LAWS/REGULATIONS INVOLVED:
10 V.S.A. Chapter 151
(Act 250)

The Vermont Environmental Board hereby issues Amended Land Use Permit #3R0703-EB pursuant to the authority vested in it by 10 V.S.A Chapter 151. This permit applies to the lands identified in Book 70, Page 128, of the Land Records of the Town of Randolph, Vermont, as the subject of a deed to Idora Tucker, and a lease to Stokes Communications Corporation, the Permittees, as grantees. This permit amends the conditions of Land Use Permit #3R0703, which authorizes the Permittees to replace a 120-foot broadcasting and communications tower with a 300-foot tower. The project is located on the Randolph Road in the Town of Randolph, Vermont.

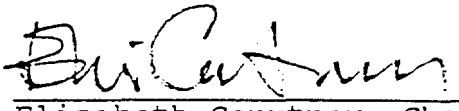
The Permittees, and their assigns and successors in interest, are obliged by this permit to comply with the following conditions:

1. The project shall be completed, operated and maintained in accordance with: (a) the terms and conditions of Land Use Permit #3R0703, except as amended hereby; (b) the plans, exhibits, and testimony submitted by the Permittees to the Environmental Board; (c) Findings of Fact and Conclusions of Law #3R0703-EB; and (d) the conditions of this permit. No changes shall be made in the project without the written approval of the District #3 Environmental Commission.

2. On or before February 18, 1994, the Permittees shall install devices on the lights of the tower to shield them, in accordance with the Permittees' proposal described in Findings of Fact and Conclusions of Law #3R0703-EB. Such light shields shall achieve at least a substantial (75-90 percent) reduction in the direct visibility of the lights, not including light reflected or refracted by fog, clouds, or precipitation, below the horizontal plane of the lights.

Dated at Montpelier, Vermont this 13th day of December, 1993.

ENVIRONMENTAL BOARD



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VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151

Re: Stokes Communication Corp.
Land Use Permit #3R0703-EB
Appeal and Revocation

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision dated December 13, 1993, pertains to an appeal and a revocation petition filed with respect to Land Use Permit #3R0703 issued to Stokes Communication Corp. (Stokes) and Idora Tucker authorizing the permittees to replace a 120-foot broadcasting and communications tower with a 300-foot tower on land owned by Idora Tucker. For the reasons explained below, the Board 1) concludes that the project for which the District Commission issued a permit complies with Criteria 1(air) and 8 (aesthetics), and 2) concludes that although grounds for revocation exist because the permit was not complied with it will provide an opportunity for Stokes to correct the violation by applying for an amendment with Contel Cellular Telephone as co-applicant.

I. BACKGROUND

On September 22, 1992, Pierre LaFrance, Richard Theken, Bryant Smith, Elizabeth LaFrance, and Joan Sax (the Appellants) filed an appeal of Land Use Permit #3R0703 (the permit) and supporting findings of fact and conclusions of law issued by the District #3 Environmental Commission on August 25, 1992. The permit authorizes Stokes to replace a 120-foot broadcasting and communications tower with a 300-foot tower on a 93.5 acre tract of land on the Randolph Road in Randolph. The Appellants objected to the District Commission's findings with respect to 10 V.S.A. § 6096(a)(1)(air), 8(aesthetics, scenic or natural beauty), 9(K)(public investments), and 10(town and regional plans).

A prehearing conference was convened by Board Chair Elizabeth Courtney on October 29, 1992; due to the resignation of a staff attorney, a prehearing conference report was not issued until February 3, 1993.

On January 20, 1993, the Appellants filed a motion for a stay. On January 22, Stokes filed a motion to dismiss the appeal for lack of jurisdiction and requested a hearing on the motion.

On February 11, Stokes filed a motion to quash a subpoena issued to Stokes by Gerald Tarrant, the Appellants' attorney.

On February 26, the Board issued a Memorandum of Decision in which it denied the Appellants' motion for a stay.

On March 3, the Appellants filed a petition to revoke the permit. On that date the parties filed a stipulation of facts pertaining to the question of jurisdiction.

On March 10, the Board convened a public hearing and heard oral argument from the parties on Stokes's motion to dismiss.

On March 30, the Appellants filed a second motion to stay.

On March 31, the Board issued a Memorandum of Decision in which it a) denied Stokes's motion to dismiss; b) dismissed the appeal on Criteria 9(K) and 10; and c) granted party status to Bryant Smith on Criterion 8(aesthetics) pursuant to Rule 14(A), to Richard Theken on Criterion 8(aesthetics) pursuant to Rule 14(A), to Elizabeth LaFrance on Criterion 1(air) to the extent it pertains to interference with radio and television reception pursuant to Rule 14(A), to Joan Sax on Criterion 8(aesthetics) pursuant to Rule 14(B)(1)(a) and (b), and to Pierre LaFrance on Criterion 1(air) to the extent it pertains to interference with radio and television reception and Criterion 8(aesthetics) pursuant to Rule 14(b)(1)(a) and (b).

On April 5, the Board issued a Memorandum of Decision in which it denied the Appellants' motion to stay, stated that the appeal and revocation petition will be consolidated, and ordered Stokes to comply with the subpoena issued to Stokes by Attorney Tarrant.

On May 19, the Board convened a public hearing, with the following parties participating:

Stokes by John R. Ponsetto, Esq.
The Appellants by Gerald R. Tarrant, Esq.

During the hearing the question of whether alternate sites may be considered as potential mitigation under Criterion 8 was raised. The Board asked the parties to submit briefs on this issue.

On June 9, the Board issued a Memorandum of Decision in which it sustained Stokes's objections to testimony concerning alternate sites for the location of the tower and ordered that all prefiled testimony and exhibits relating to alternate sites be stricken from the record. On June 28 the

Board issued a corrected decision. A reconvened hearing date and dates for filing additional prefiled testimony were established.

On July 6, Stokes submitted a letter to the Board objecting to the introduction of prefiled testimony filed by the Appellants for Kathleen Ryan and Robert Cham, and on July 13 Stokes filed further objections.

On July 22, the Board issued a Memorandum of Decision in which it stated it would accept the supplemental prefiled testimony of Kathleen Ryan and Robert Cham, and provided additional time for Stokes to prepare a response. The Board also requested Stokes to submit prefiled testimony concerning the feasibility of shielding the lights on the tower.

On September 1, the Board reconvened the hearing. The Board recessed the hearing pending the filing of proposed findings and Board deliberation and decision.

On September 17, the Appellants and Stokes filed proposed findings of fact and conclusions of law. On that date, Stokes's attorney, John Ponsetto, also submitted a letter containing additional legal argument and a request that the Board not consult with its General Counsel in its deliberation on the legal issues in this appeal and petition to revoke. On September 22, the Appellants' attorney, Gerald Tarrant, submitted a letter responding to the comments in Mr. Ponsetto's letter.

The Board deliberated concerning this matter on July 14, October 7, December 1 and December 8, 1993. On December 8, following a review of the evidence and arguments presented in the case, the Board declared the record complete and adjourned the hearing. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

II. ISSUES

1. Whether to grant Stokes's request that the Board not consult with its General Counsel in its deliberations on the legal issues in this case.

2. Whether to revoke Land Use Permit #3R0703 either because:

a) Stokes willfully or with gross negligence submitted inaccurate, erroneous, or materially incomplete information in connection with the permit application, and that accurate and complete information may have caused the district commission to deny the application or to require additional or different conditions in the permit, or

b) Stokes has violated the terms of the permit or any permit condition.

3. Whether the project complies with Criterion 1(air) with respect to interference with television and radio reception.

4. Whether the project complies with Criterion 8(aesthetics, scenic and natural beauty).

5. Whether Contel Cellular Telephone should be a co-applicant.

III. FINDINGS OF FACT

1. On July 6, 1992, Stokes filed an application for an Act 250 permit, which stated: "We intend to erect a new 300' broadcasting and communications tower to improve the service area of radio station WCVR-FM. Currently, a 120' tower is on the site."

2. The permit application was signed by Ed Stokes on behalf of Stokes Communications Corporation. Idora Tucker, who owns the land on which the tower is located and leases it to Stokes for his tower, is a co-permittee.

3. The new tower is located on a one-acre parcel of land which had previously been leased by Stokes from Idora Tucker. Stokes has used the site since erecting the tower in 1982.

4. The District #3 Environmental Commission determined to treat the application as a minor, pursuant to Board Rule 51. In response to a request for a hearing, the District Commission convened a hearing on August 5, 1992 (the hearing).